

**MINUTES  
STATE OF WASHINGTON  
ENERGY FACILITY SITE EVALUATION COUNCIL**

**March 10, 2003 - Regular Meeting<sup>1</sup>**  
4224 6th Avenue S.E., Building 1  
Lacey, Washington, 1:30 p.m.

**ITEM 1: CALL TO ORDER**

**CHAIR LUCE:** The regular meeting of the Washington State Energy Facility Site Evaluation Council for Monday, March 10, 2003, will come to order.

**ITEM 2: ROLL CALL**

**EFSEC Council Members**

**Community, Trade & Economic Development**  
**Department of Ecology**  
**Department of Fish & Wildlife**  
**Department of Natural Resources**  
**Utilities and Transportation Commission**  
**Chair**

Dick Fryhling  
Chuck Carelli  
Jenene Fenton  
Tony Ifie  
Tim Sweeney  
Jim Luce

**MR. MILLS:** I note the presence of Chair Jim Luce and there is a quorum.

**OTHERS IN ATTENDANCE**

**EFSEC Staff and Counsel**

Allen Fiksdal  
Mike Mills  
Michelle Elling  
Ann Essko - AGO

Irina Makarow  
Mariah Laamb  
Pete Dewell – ALJ (via phone)

**EFSEC Guests**

Chuck Lean - Wallula Gen  
Scott Noll - Wallula Gen  
Mike Lufkin, CFE  
Doug Egan - Competitive Power Ventures  
Duncan McCaig - Chehalis Power  
Greg Poremba - ENSR  
Kirk Deal - Carpenters Union  
Andy McNeil - Duke Energy Grays Harbor  
Richard Butler - Shapiro (via phone)

Liz Thomas - Preston, Gates & Ellis  
Darrel Peebles, Wallula Gen  
Mike Elmer, Starbuck  
Cindy Custer, BPA  
Karen McGaffey - Perkins Coie  
Phil Newton - URS Corp  
Mike Elmer - Starbuck Power Project  
Laura Schinnell - Energy Northwest  
Terry Witherspoon - Shapiro (via phone)

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<sup>1</sup> The minutes are in transcript style and have had minor editing for clarity purposes.

### **ITEM NO. 3: APPROVAL OF MINUTES**

**CHAIR LUCE:** The first item on the agenda is the approval of the minutes for February 10, 2003, our regular meeting; and February 18, 2003, our special meeting. Have Council Members had an opportunity to review those minutes?

**COUNCIL MEMBERS:** Yes.

**CHAIR LUCE:** Do they have any comments, corrections, or additions? Yes, Ms. Fenton.

**MS. FENTON:** Maybe I just haven't paid attention to the first page of our minutes in our last couple months, but I notice that these minutes have been edited, and since we have Shaun here taking verbatim minutes, I'm wondering why we're editing our minutes.

**MR. FIKSDAL:** We edit the regular meeting minutes for clarity. It's surprising what we actually say, and we edit it very mildly, so it makes it a little more clear on some of the "uhs" like I just said and repetitive things that we say we do delete some parts. It isn't exactly verbatim, but it's pretty close.

**CHAIR LUCE:** This is similar to in the congressional record.

**MR. FIKSDAL:** If you would rather not have us edit it, that would be just fine.

**MS. FENTON:** Since we have a court reporter it would be my preference, but I could be the only one.

**MR. FIKSDAL:** We still look over Shaun's copy because sometimes she doesn't know all the terms.

**MS. FENTON:** I understand that part.

**CHAIR LUCE:** Anything else?

**MS. FENTON:** Not right now.

**CHAIR LUCE:** I'm going to note that I was absent for the February 18, 2003 special Council meeting. All in favor of accepting the minutes for the regular meeting of February 10 please say aye.

**COUNCIL MEMBERS:** Aye.

**CHAIR LUCE:** They're adopted. I'm going to abstain from the February 18, 2003 minutes, since I was not here at the special Council meeting. So acting Chair Carelli.

**MR. CARELLI:** All those in favor of approving the February 18, 2003 minutes as presented in the packet indicate by saying aye.

**COUNCIL MEMBERS:** Aye.

**MR. CARELLI:** Opposed? The motion carries.

### **ITEM NO. 4: ADOPTION OF PROPOSED AGENDA**

**CHAIR LUCE:** The next item on the agenda is the adoption of the proposed agenda. Have Council members had an opportunity to review the proposed agenda? I'll assume that's a yes. Staff, do you have any requests or additions or reordering of any items on the agenda?

**MR. FIKSDAL:** No.

**MR. MILLS:** No.

**CHAIR LUCE:** Then we will consider the proposed agenda adopted as presented.

## ITEM NO. 5: KITTITAS VALLEY WIND POWER PROJECT

<b><i>Progress Report</i></b>	<b><i>Irina Makarow, EFSEC</i></b>
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**CHAIR LUCE:** The first item on the agenda is the Kittitas Valley Wind Power Project with a progress report from Ms. Makarow.

**MS. MAKAROW:** Pete, can you hear me?

**MR. DEWELL:** That's great.

**MR. BUTLER:** For the record, Richard Butler and Terry Witherspoon of Shapiro are here. We're on board for any questions.

**MS. MAKAROW:** Not quite yet, but we're just about to start, Richard. On January 31<sup>st</sup>, EFSEC staff signed a task order with Shapiro, the Councils' independent consultants, and they began their application review work. The application review report will be submitted to EFSEC next week and we'll distribute it to all Council Members and the Applicant as soon as we receive it.

The next step after receiving that report is the Applicant will respond to the information requests that Shapiro has identified based on their review. The time line for the response will determine the time line for the completion of Shapiro's review of the application. Within two weeks of the Applicant's response, Shapiro will make a recommendation to EFSEC as to whether the application is sufficient to proceed with the adjudication, and at that time Shapiro will also make a recommendation to EFSEC regarding a number of waivers that the Applicant has requested in their application. They requested specifically that information regarding systems of heat dissipation, aquatic water discharge, Prevention of Significant Deterioration, for example, not be required for this project.

We have a public informational meeting scheduled for this Wednesday, and since all the Council Members are here, I would ask you to wear water resistant footwear. The site might be a little bit wet. Apart from that, we sent out all of the public notices. All the meeting coordination is being finalized.

We'll start with the scoping meeting with the agencies at ten o'clock in the morning, a site tour around 1:00 p.m., and then the public informational meeting will start at 6:30 p.m. with an open house and the meeting proper at 7:00 p.m. Based on comments received and the scoping comments that are due to the Council, postmarked by March 14<sup>th</sup>, Shapiro will prepare a scoping summary, and we will internally finalize the scope of the Environmental Impact Statement.

With regard to BPA's requirement for a NEPA review, BPA has reviewed the application, and has made the decision that at this point in time they do not believe a NEPA review is required. If the Applicant does request to interconnect with their system, at that point in time they would decide what type of review that would undertake. However, they are going to be present at the public informational meeting as an opportunity for them to hear what the concerns are about the project.

The other things that have happened are on March 6<sup>th</sup>, staff visited the site with a few of the representatives from Shapiro. It was a great visit, and we have identified the viewpoints for you to see the site and the surrounding locality for Wednesday. Julian Dewell is going to work as the Administrative Law Judge for this project, and none of the optional state agencies that we've contacted will be participating in the review of the project. Also a county representative has been identified, Ms. Patty Johnson, and there's a letter in your packets, and you will get to meet her on Wednesday.

Finally, staff has approved contract task orders for review of project impacts by the Department of Fish and Wildlife and Ecology's industrial section. So just as a recap, in the short term we've got the public meeting, the application review report next week, and scoping comments in about four to five weeks. In the medium term we'll be seeing the application sufficiency report, and the Council will have to act on the waivers that are being requested, and also at that point in time the Council will have to start looking at how they want to coordinate the adjudicative proceedings within this review. Are there any questions?

**CHAIR LUCE:** Questions from Council Members? Any comments from the public, questions from the public? All right. Thank you very much, Irina. I appreciate that.

**MS. MAKAROW:** Thank you.

**CHAIR LUCE:** Pete, did you have anything?

**MR. DEWELL:** No, I got it all. Thank you.

**CHAIR LUCE:** Great. Thank you very much.

## **ITEM NO. 6: CHEHALIS GENERATION FACILITY**

<b><i>Construction Progress Report</i></b>	<b><i>Duncan McCaig, Chehalis Power</i></b>
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**CHAIR LUCE:** The next item on the agenda is the Chehalis Generation Facility. We have both a construction project report from Tom Schneider and water use mitigation recommendations for action by Mike Mills. I think that concerns the Hamilton water rights, so let's start with Mr. Schneider.

**MR. MILLS:** Duncan McCaig, plant manager is here, and he will give the progress report.

**CHAIR LUCE:** All right. Welcome, Mr. McCaig.

**MR. McCAIG:** Thank you very much. Let's see. The overall progress summary is up to and including the 24th of January, which is the last date that we have statistics for. At that time the engineering was 100 percent complete. Procurement was 99.8 percent complete. Construction was 75.9 percent complete, and the overall project was 93.3 percent complete. That includes the General Electric gas turbines, which had to wait for the completion of the overall duct work. The general progress for the week ending the 2nd of March is that the site had 583 total personnel, including 22 Tractebel staff, 518 TPA employees, and 43 subcontractors. There were no lost time incidents during the month of January, and generally the work was progressing as follows: In the HRSGs work is continuing on piping, electrical, and instruments. The air cool condenser has been pressure tested to make sure that it is sealed and secure. Fan load testing is beginning now. On the steam turbine generator all three major turbines are in place, and we have completed bolting up the couplings for those units. Piping work and electrical testing is ongoing on the combustion turbines, and General Electric is starting to work and test on units. Large bore and small bore piping is being installed on the HRSGs, as well as the closed cooling water pumps and other pumps.

We're continuing to do hydro testing in all areas, and we have flushed the fuel oil piping. Electrical work is continuing, and it's generally in the 85 to 95 percent depending on the work. Insulation is being installed. Paving is ongoing. We're now beginning to enter the start-up phase of the project, and we have a number of system turnover packages turned over. We've reviewed 29 out of 85 turnover packages from construction to start-up to date. We're continuing to do lube testing. About ten percent of the lubes have been completed to date. We continue to be back fed

from the Napavine BPA substation, and generally the water and gas supply pipelines are complete. That concludes the construction update.

**CHAIR LUCE:** Thank you very much. I appreciate that. Any questions from the Council? We have another item regarding water.

<i>Water Use Mitigation</i>	<i>Mike Mills, EFSEC</i>
<p><b>MR. MILLS:</b> Yes. Council has before it today an action item. Staff recommends that you approve Resolution No. 304. It's the water use mitigation for the Chehalis Generation Facility. One of the site certification agreement requirements for this project is that the company, Chehalis Power, use its best efforts to acquire 102 acre feet of water right prior to commencement of commercial operation.</p> <p>You'll recall that the company was before you several months ago with a request, and it was approved to require 52 acre feet from what was referred to as the Reisinger water right. Subsequent to that they filed another application to acquire about 50 acre feet from the Hamilton water right. That was the action that we deferred at last month's meeting. There were some issues that arose with the Reisinger right as it went through the Ecology transfer or water change process. Chehalis Power has come back and is now requesting that it satisfy the full 102 acre feet requirement from the Hamilton right, and I would just ask Liz Thomas to review the proposal for the Council.</p> <p><b>MS. THOMAS:</b> Thank you, Mike. As you will recall we have a two-step process in meeting our water right mitigation obligation. We come to you and ask you to confirm whether a proposed water right satisfies the water right conditions in the site certification agreement. If you feel that it does, we then go on to Ecology and ask them to process a transferred right as we transfer it to the trust water right program for dedication to in-stream flows in the Chehalis River. As Mike described, we got through the first step of the process on our first water right last fall. We brought in some documentation on the Reisinger right. Ecology had approved it, and for purposes of your approval, you approved it. We then filed with Ecology for the transfer portion of the two-step process, and at that point in time some questions arose over the history of use of the right. The questions were not foreseen. In my experience an odd thing to have happen, but it did happen.</p> <p>Ecology has not yet completed its analysis of the Reisinger right and whether the Reisinger right really does qualify for transfer into the trust water right program. Chehalis Power feeling that the best thing to do was to err on the safe side decided in January that what we should do is to come back to you. We already had pending before you the Hamilton water right, the second water right. At that time we were asking you to approve a quantity in the amount of about 50 acre feet. Given the concerns over the Reisinger right, we thought the smartest thing to do was to come and ask you to approve the Hamilton right for the full 102 acre feet, which means that if the Reisinger right does not pan out to Ecology's satisfaction, we can turn to the Hamilton right for the entire quantity, so that's our request to you today. If you approve, we'll then start the transfer process with Ecology for the 102 acre feet, and Ecology can either approve Hamilton or it can approve a combination of Hamilton and Reisinger.</p> <p>Basically the request we have mirrors precisely the language in the draft resolution that's before you. We would like to ask you that the two certificates associated with the Hamilton right meet the criteria for dedication to the Chehalis River under the SCA. We would like to ask you to approve our proposal to acquire a dedicated portion of the water rights in the amount of 106 acre feet. The reason it's 106 rather than 102 is that a four-acre foot incremental difference goes to</p>	

ground water wells that conceivably exempt wells could be developed on site. So the amount of water going to the river could be as little as 102. To cover the increment of potential exempt wells, we're asking you to approve 106. Basically we buy 106 from Hamilton and Ecology would credit us for 102 to the river. We're asking you to determine that Chehalis Power should get an acre foot credit in the amount of 102 acre feet from the Hamilton right, and finally we ask you to determine that with this action on the Hamilton water right we have satisfied the water right mitigation requirement of the SCA as long as we complete the acquisition and the water right change process with Ecology. I'd be happy to try to answer any questions you may have.

**CHAIR LUCE:** Thank you. Mike, if I understand it correctly, we have a letter from Mary Sue Wilson, the Assistant Attorney General for Ecology.

**MR. MILLS:** Correct, and it confirms the Department of Ecology has reviewed the Company's proposal to acquire all the rights from the Hamilton right, and they have concurred with that.

**CHAIR LUCE:** All right. Questions from the Council? Ms. Fenton.

**MS. FENTON:** The only question I have is that this proposal is to take care of the entire mitigation with the Hamilton right. But what I thought I heard you say, Liz, was there is some possibility you may use a portion of the Reisinger one as well.

**MS. THOMAS:** That's right. If you approve the action we've requested here, you would have approved a grand total of almost 152 acre feet, and then depending on how Ecology's evaluation of the two sites play out, we've basically kept our options open. We've got a belt and suspender, so that if the problems persist with Reisinger, we go with Hamilton for the full 102. We are trying to again err on the side of caution here.

**MS. FENTON:** No, I think from your standpoint that makes sense. I'm just more concerned about the track record in our evaluations as far as where we stand.

**MR. MILLS:** Can I respond?

**MS. FENTON:** Yes.

**MR. MILLS:** When the company has satisfied the change process with Department of Ecology, I would expect that they would submit a letter to the Council, and we would acknowledge at that time that they in fact closed out the resolution, and they will tell us what the mix is at that time.

**MS. FENTON:** Okay.

**CHAIR LUCE:** Any other questions? Comments from the public? We have a resolution before us. Do we have a motion?

**MS. FENTON:** So moved.

**MR. CARELLI:** Second.

**CHAIR LUCE:** The motion has been made and seconded to adopt Resolution No. 304 concerning Chehalis Power Generation water use mitigation proposal and the use of the Hamilton Water Right. Discussion? Call for question?

**MS. FENTON:** Question.

**CHAIR LUCE:** The question has been called for. All Council members in support of the resolution signify by saying aye.

**COUNCIL MEMBERS:** Aye.

**CHAIR LUCE:** The resolution is adopted. Thank you very much.

**MS. THOMAS:** Thank you.

**MR. McCAIG:** Thank you.

**MR. DEWELL:** Jim, I only came on for the Kittitas thing, so Michelle and Irina didn't think it was necessary for me to stay on for anything other than that.

**CHAIR LUCE:** Well, if you're interested, Pete, we would be glad to have you, but I understand there's other business to attend to as well.

**MR. DEWELL:** Okay.

**CHAIR LUCE:** Thank you.

## **ITEM NO. 7: WALLULA POWER PROJECT**

<b><i>Change in Corporate Structure</i></b>	<b><i>Mike Mills, EFSEC</i></b>
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**CHAIR LUCE:** The next item on the agenda is a matter concerning the Wallula Power Project, and, Mr. Mills, you want to describe the notice of the public meeting to receive comments on the request for technical amendment on the change of site certificate regarding ownership.

**MR. MILLS:** Yes. Wallula Generation has requested that the Council consider a change in the ownership of the project or what was referred to as a change in the corporate structure, and they filed that request pursuant to Council rules Chapter 463-36 of the WAC, the procedure for amending or terminating a site certification agreement. We've briefed the executive committee, and I believe the Council on this previously and indicated that we, staff, were recommending that this be handled as a request for a technical amendment pursuant to the WAC, and that would be in the form of a resolution, and that is what we are proposing. But in looking at the WAC further with our counsel Ann Essko and with representatives from the company we also felt that the proposed corporate change in the corporate structure would also trigger the requirement in the WAC concerning a transfer of a site certification agreement. Ann, do you want to speak just briefly to that portion of the rule?

**MS. ESSKO:** Two separate actions, right. The rules contemplate two different processes that are memorialized in two separate ways. Transfer of the site certification agreement under Subsection 100 of Chapter 463-36 is by its own terms memorialized by an order. The balance of the rule talks about amendments to site certification agreements, so when you have a transfer under Subsection 100 that also triggers an amendment under the balance of the rule. You have to prepare an order as contemplated by Subsection 100 with respect to transfers, then you have to go through the rest of the analysis about whether the amendment is one that has to go to the Governor or it's one that can be done by resolution. So here there's an order because you have a transfer of an interest in a site certification agreement under Subsection 100. You also have a resolution because you go through the amendment analysis. This isn't an action that needs to have the amendment go to the Governor. It's one that is done by a resolution.

**MR. MILLS:** Thank you. The process also involves pursuant to the WAC that the Council notice that it's received a request for amendment and in this case an application for transfer. And we did. The Council did issue a notice and requested public comment, and that notice was sent to over 600 parties. We received two comment letters in the form of e-mails. One from Michael Dunning, the CFE for this project, indicates that he and Ron Lavigne met with Scott Noll regarding Wallula Project ownership changes, and we have no objection to those changes or the amendment to the SCA to reflect those changes.

We also received a comment from the Washington State Department of Transportation Aviation Section, and they indicated they had no comments regarding the change in ownership. Those were the only two comments that we received. I believe it would be appropriate, Mr. Chair, to request if there is anyone from the public that wishes to comment at this time.

**CHAIR LUCE:** Thank you. I think that is appropriate. Is there anyone from the public that wishes to comment with respect to the request for the technical amendment on the Wallula Power Project site certification agreement? Hearing that there is no one who wishes to comment, we'll close the public comment section of this particular proceeding, and I would seek your vice, Mike or Ann, with respect to what's the next item to resolution.

**MR. MILLS:** I believe it would be appropriate for the company to review their proposal with the Council at this time, and then staff would make a recommendation on the two action items.

**CHAIR LUCE:** Very well. If the company would like to come forward and make that presentation to the Council. Please state your names for the record.

**MR. PEEPLES:** Darrel Peeples, attorney for the certificate holder, along with Doug Egan representing the company, and Chuck Lean, attorney also for the certificate holder. What I think I would do would be to have Doug run through briefly the ownership change and allow the Council to ask him any questions with regard to those changes, and then I guess we move on it at that point, Mr. Chairman, to the resolution and order discussion on the language. This was worked on by Council staff and Chuck Lean, so most of those, if any, questions regarding the resolution coming from the certificate holder's point of view probably should go more directly to Chuck than myself.

I do have one comment on the order I would like to lead out with though, and it's kind of a generic one. I noticed in there when I reviewed it today, having been gone for three weeks, that there's an outline. It almost looks like an amendment to the application itself with regard to ownership.

Generally historically, not even generally historically, the application I don't think has been amended in this situation, and I would caution the Council getting into the situation where they would amend the application itself. I think the application probably should end at the time of its filing. I don't think it's ever been really used as a living document because so many changes occur after that application is filed.

That reference becomes part of the order itself, and this is creating an inference that whenever there's a change that the application itself has to be formally amended. I think that's going to get into somewhat of a procedural nightmare, not especially for this case, but I'm talking about other cases coming forward.

A lot of changes that occur after the application is filed are a result of negotiations between the parties, good points brought up by other people in the process, and they have never gone bad. I know of very few situations where there has been a formal amendment changing the four corners of the application itself to reflect those changes, so I think the Council ought to really consider carefully any inference that it's going to formally require an amendment to an application. With that, Doug, why don't you just go ahead and explain.

**MR. EGAN:** I'm Doug Egan. I'm president of Competitive Power Ventures. Let me as briefly as I can go through what the change is that we are asking the Council to consider. The project company that holds all the permits and contracts associated with the project is previously and still is Wallula Generation, LLC. Originally there were three owners, second tier owners of Wallula Generation, LLC., Wallula Power, Inc., Newport Wallula, Inc., and Wallula Land Co., LLC. Newport Wallula and Wallula Power each have 47 1/2 percent. Wallula Land had five percent. Wallula Land has been bought out, so Newport Wallula and Wallula Power now each have 50 percent instead of 47 1/2 percent.

The more significant change occurred at the third tier above Newport Wallula and Wallula Power, and that is that Newport Generation Holdings, LLC., which owned a hundred percent of



those two corporations has been replaced in this chain of ownership by Competitive Power Venture Holdings, LLC. Competitive Power Venture Holdings, LLC., like Newport Holdings is a company that is owned primarily by Warburg Pincus, a private equity firm, and the rest of the ownership is owned by the management team, so what really happened here is the management team has been changed out from the Newport team to the Competitive Power Ventures team of which I'm the president.

**CHAIR LUCE:** Thank you. Any questions from Council Members? I appreciate, Mr. Peeples, your comment regarding the amendment of the application. I think legal counsel has looked at this particular issue, and I think that if I could have a moment to consult with legal counsel. I would ask legal counsel to address this particular area.

**MS. ESSKO:** The application is incorporated by reference into the SCA, so it seemed to cause more confusion to leave the application which specifically describes the corporate ownership of Wallula Gen. It seemed to cause confusion to leave the application itself unchanged when the information in it is now based on the new changes erroneous when the application has been incorporated by reference into the SCA.

**MR. PEEPLES:** The only comment, and I'm not debating any issue here. I'm just trying to point out to the Council that there's a lot of things that's in that application that's incorporated by reference that does not really fit the project in the end, and this is true of this project and all others. So just kind of be aware of that, and it's been an amorphous situation. I'm not disagreeing with your comment, but, you know, essentially maybe if you did it by rhetorical simplification by saying we adopt the application by reference, but the order really prevails over any inconsistencies, and I think that's the way it's been interpreted.

**CHAIR LUCE:** It is a reasonable process issue, and we will keep that under advisement in the future.

**MR. PEEPLES:** And I'm not concerned about this case. It's a future case. I think an order should be issued on all things like this. I know there's some discussion whether an order should or should not be. I think apart from any of those reasons an order should be issued, so people can follow it through ten years later and understand, well, this was a change, and you have an order here rather than a resolution?

**CHAIR LUCE:** Thank you. I would ask staff at this point in time, Mike, do you have a preference whether we act first on the resolution or on the order.

**MR. MILLS:** I believe the order should be acted on first.

**CHAIR LUCE:** We have an order before us, Council Order No. 775, approving the transfer of ownership in Wallula Generation.

**MR. FIKSDAL:** Mr. Chair, before you begin, we have modified it slightly, and please look at the pink sheet. The only modification is a change on the order of the first two paragraphs. Paragraph No. 1 in the white sheet is now Paragraph No. 2 in the pink sheet. Paragraph No. 2 in the white sheet is now Paragraph No. 1 in the pink sheet.

**CHAIR LUCE:** It is so noted. Council will be acting on the pink sheet, Council Order No. 775.

**MR. FIKSDAL:** But it would still include all the attachments that are in the white sheet.

**CHAIR LUCE:** Still including all of the attachments in the white sheet, so we'll merge pink and white. Is there a motion to adopt the order on application for transfer of ownership?

**MR. CARELLI:** So moved.

**MS. FENTON:** Second.

**CHAIR LUCE:** Any discussion? Call for the question?

**MR. IFIE:** Question.

**CHAIR LUCE:** All in favor say Aye.

**COUNCIL MEMBERS:** Aye.

**CHAIR LUCE:** Thank you. The order is adopted. Are there any comparable changes to the resolution?

**MR. FIKSDAL:** I don't believe so, no.

**CHAIR LUCE:** We do have a resolution before us now. At this point in time Resolution No. 305 regarding modification to the corporate structure of the site certification Wallula Generation, LLC. project, do we have a motion to adopt Resolution No. 305?

**MR. FRYHLING:** So moved.

**CHAIR LUCE:** Do we have a second?

**MR. CARELLI:** Second.

**CHAIR LUCE:** Discussion among the Council? Do we have a call for the question?

**MR. CARELLI:** Question.

**CHAIR LUCE:** Any discussion? All in favor say Aye.

**COUNCIL MEMBERS:** Aye.

**CHAIR LUCE:** The Order and resolution are approved, and the technical amendment is approved.

**MR. PEEPLES:** Thank you.

**CHAIR LUCE:** Thank you very much.

## **ITEM NO. 8: SATSOP COMBUSTION TURBINE PROJECT**

<b><i>Status Report</i></b>	<b><i>Andy McNeil, Duke Energy</i></b>
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**CHAIR LUCE:** The next item before the Council is the Satsop Combustion Turbine Project. We have a status report. Mike, are you handling that?

**MR. MILLS:** Actually Andy McNeil is going to give the report, and I believe he's here and prepared to do that.

**CHAIR LUCE:** There he is. All right, Andy. Good to see you.

**MR. McNEIL:** I even wore my striped shirt, so I would look tall and slim.

**CHAIR LUCE:** I wish I had one of those. That's why I wear black.

**MR. McNEIL:** Good afternoon. I wanted to give you an update on the site, and I wish I could give a report as nice as the Chehalis report. However, the site is in a deferred mode right now, and what that means is basically we have six to eight craft on the site maintaining pumps and equipment. There were several questions that Ms. Fenton had last meeting, and I wanted to give you an update on those as well.

**CHAIR LUCE:** Thank you very much.

**MR. McNEIL:** The first one I think there were some concerns on the temperature and quench water and how our discussions were going with Fish and Wildlife and the Department of Ecology. Karen McGaffey, our counsel, has been in discussions with Bill Frymire, and I think that we are close to having those issues resolved. As in regards to the O & M Manual and the C-1 pond report, we have submitted those to Mr. Fiksdal, and we are trying to work or establish a meeting sometime late next week to go over some concerns and issues on those. The last thing that I wanted to address is condition S-11 which has to do with the analysis of some water. I have submitted a draft letter to Allen on that. We're asking for an extension. The primary reason for the extension is that as we dealt with the chemical companies and needing to know what the

make up was and problems there, they wanted to have more specific information on the load detectible of heavy metal during the cycle. So we need to go and do additional sampling and detailed work on the water quality of the rainy wells, so we can supply that to the chemical companies, and I think that addressed most, if not all of the questions, from last time. So any questions this time?

**CHAIR LUCE:** I'm sure.

**MS. FENTON:** Andy, I did see the letter that Karen and Bill Frymire have been working on, so I know that there is proposed language for the SCA amendments, so it looks like my questions one and two are at least in the process of being worked on. But one of the times we met I believe it was last summer you also indicated that you thought there were potential other SCA amendments that may be necessary, and you didn't at that point elaborate on what they were because we were dealing specifically with quench and temperature I believe. So I was just wondering if you have given any thought to those in taking care of any potential problems at the same time?

**MR. McNEIL:** We need to look at it and clean up some of the stuff in the SCA that no longer applies. The gas transmission that was under EFSEC jurisdiction is the thing that comes first to mind. But I don't have anything -- I don't have a timetable to do that right now. I do want to get it done. We are spending a lot of time working through these issues with Allen and everything else, and that's my primary topic right now.

**MS. FENTON:** One of the reasons why I put the list of questions together was because things at least in my mind seem to keep falling off the table unless we have them on a list and looking at them on a frequent basis. So I guess I would like to ask staff because when you're talking about monitoring and compliance issues at the executive meeting next week if we can include a discussion on potential timetable for the issues dealing with potential SCA amendments. I can't recall off the top of my head Karen's letter to Bill Frymire what the time frame was as far as asking Ecology and Fish and Wildlife to look at the proposal, but I think you had a time schedule in there. So maybe we can incorporate that language in the discussions as far as what the time frame might be for dealing with SCA amendments.

**MR. FIKSDAL:** What you're implying is if there's proposed changes to the SCA do them all at once.

**MS. FENTON:** Exactly. The next question that I had at least on the salmon was the status of the C-1 ponds. Is it holding water? Is it leaking? I am hearing rumors.

**MR. McNEIL:** There is some seepage from the C-1 pond. Once it gets about six feet it does have some seepage. We are doing sampling for water quality, and it is meeting the water quality standards. That is one of the things that we will be working with Allen and Ecology.

**MR. FIKSDAL:** We were notified that it has during heavy rainfall water does seep through the C-1 pond. We asked Duke to sample that water that was seeping through to ensure that whatever was getting out just to see what the contaminant levels were.

**MS. FENTON:** But seeping is a compliance concern.

**MR. FIKSDAL:** Yes, we know that.

**MS. FENTON:** So now that's going to be on our agenda to talk about Monday.

**MR. FIKSDAL:** It's an ongoing agenda item between Duke and staff for about the last I don't know how many months, this winter. We have many issues regarding the C-1 and the storm water runoff that we're trying to resolve. Duke has a proposal into us now, and we are reviewing that proposal to try to alleviate staff's concerns about the water runoff from the site.

**MR. IFIE:** I have a quick question with regards to that. Are you guys having difficulty in trying to take care of the seepage? Because I recall in the January meeting it appears that you were trying some cementing.

**MR. McNEIL:** We have done several things, and I have our engineer from URS here to go over the specifics, if we need to go into that much detail. But once it gets above six feet with a heavy rain, it does appear to have some seepage going through the dam, and there's several proposals or resolutions that we're working with Allen on how to resolve this issue. Two things I did mention, that the water quality is being checked and it's meeting water quality, and the other key information is that it is going into the soil within 50 to 100 feet below the dam. So it's not reaching a flowable water source into the river.

**CHAIR LUCE:** Thank you.

**MS. FENTON:** Yes, I still have a few more.

**CHAIR LUCE:** I am working the list here.

**MS. FENTON:** What kind of extension are you requesting for the S-11 requirement in the NPDES permit, which is the process water evaluation?

**MR. McNEIL:** A six-month extension.

**MR. FIKSDAL:** We haven't received that request yet. We've seen a draft letter just this morning, and so I understand that they're going to ask for that.

**MS. FENTON:** It's not due until April 8th, right? Something like that. In light of the fact that construction has been I think reasonably suspended -- is that the term we're using? I think it is -- is there an initial site restoration plan requirement that we need to look at?

**MR. FIKSDAL:** Yes. And I have met with the company about three weeks ago, and it's my understanding they're preparing a letter to the Council that would be consistent with the requirements in the site restoration plan.

**MS. FENTON:** So we'll have a time schedule on that one, so that we can keep these moving around.

**MR. McNEIL:** Yes, I'm sure we will. I think the key there is although if you look at the total language of the letter we probably have not met the criteria as in the total language, but we are in a deferred mode. We have a limited staff, and for the most part with the criteria that was already established are things that we are doing as a day-to-day practice anyway.

**MS. FENTON:** Two other questions. The Storm Water Pollution Prevention Plan, Requirement No. S-8 in the NPDES permit, was due February 9, and I'm looking at that particular requirement. It says that you were suppose to submit it, implement it, and it's suppose to have been approved by the Council prior to February 9. And unfortunately I've got that one on my list, but in looking back at the NPDES permit it jumped out at me again. So what's the status of the Storm Water Prevention Plan?

**MR. FIKSDAL:** They submitted it to us. We're still reviewing it. We have questions on it, and I think we're just about ready to go back and talk to the Applicant about it.

**MS. FENTON:** Was it submitted prior to February 9th?

**MR. FIKSDAL:** Yes, it was.

**MS. FENTON:** The other concern that I have heard is, have there been spills on site?

**MR. McNEIL:** There were six -- you're talking about an old spill or whatever? There were six spills on site during from you might propose breaking during construction or that sort of thing, yes.

**MR. FIKSDAL:** We have a draft letter and staff will be asking the company to submit those reports to the Department of Ecology as soon as possible.

**MR. McNEIL:** I guess the other piece that I need to point out it's my understanding the threshold to really consider a spill is five gallons and none of these met that requirement.

**MS. FENTON:** My only concern was that I heard that there were spills, and the water goes down the ditch into the C-1 pond, and I'm glad you're taking water quality tests of the C-1 pond.

**MR. McNEIL:** We follow the best management practices. Yes, that is true. As a last resort they do go down there, but there's many steps that you take before you get to that point.

**MS. FENTON:** I think that's all the questions that I have, but I imagine we're going to have a few more questions next meeting.

**MR. FIKSDAL:** We are going to have a discussion. I don't know if they're on all of these issues, but, yes, all the issues that you raised we are working on. There were several questions, and we have been working with Duke on many of these issues to try to get them resolved to staff's satisfaction first. So we're continuing our efforts.

**MS. FENTON:** Thank you, Andy.

**MR. IFIE:** Mr. Chair.

**CHAIR LUCE:** Please.

**MR. IFIE:** The February regular meeting, Allen, I recall you saying that there was going to be a comprehensive plan regarding the NPDES permit issues. There was going to be one comprehensive plan, and that was going to be submitted prior to the end of the month. And then, Andy, I heard you say that you just submitted an O & M plan.

**MR. McNEIL:** No, we didn't submit it. We have also submitted a report. URS on our behalf submitted a report where there's some inconsistencies. These are differences in the NPDES is one of them, and then there's several other issues that we're trying to resolve with Allen and also we're like I mentioned earlier trying to establish a meeting with Allen and Ecology to flush out these things.

**MR. FIKSDAL:** I think, Tony, there may be a couple different things. We had asked Duke to come to the Council and address the issues that Jenene had on a list, and this is I believe the list, and that was going to be at the last executive committee meeting, but Karen McGaffey was out of town, so we postponed that. And then they were going to address several other issues that we have been working with them on the NPDES permit, and they have submitted suggested changes in the way that the site I guess would operate as far as the storm water runoff and some of the discharges which is part of the NPDES permit, and they submitted that letter to us and report. It's an engineering report that we asked for. And so we're in the process of reviewing that right now, and they've submitted a Storm Water Pollution Prevention Plan, so they submitted quite a few things in the last month or so. And then today they've just submitted their Storm Water Systems Operation Maintenance Manual to us today. That's what this is. So I don't know if you're referring to the comprehensive list that Jenene had.

**MR. IFIE:** No, I was referring to a comprehensive report that you mentioned at the last February meeting.

**MR. FIKSDAL:** I think that was that we were expecting Duke to submit a report, the engineering report that they submitted to us that we're reviewing now.

**MR. IFIE:** Okay. Thank you.

**CHAIR LUCE:** Additional questions?

**MS. FENTON:** Yes, the greenhouse gas plan. Am I correct is that coming next Monday?

**MR. McNEIL:** Karen will be doing that, and she wants to touch bases with you and Chuck and Jim, and if we get that done this week, we want to present it to the Council next week.

**MS. FENTON:** Okay. Thank you.

**CHAIR LUCE:** Additional questions? Thank you very much, Mr. McNeil.

**MR. McNEIL:** Thank you.

#### **ITEM NO. 9: BP CHERRY POINT PROJECT**

<b><i>Progress Report</i></b>	<b><i>Michelle Elling, EFSEC</i></b>
<p><b>CHAIR LUCE:</b> The next item on the agenda is an information item regarding the British Petroleum Cherry Point Project. Ms. Elling.</p> <p><b>MS. ELLING:</b> Thank you. I just wanted to update the Council quickly on where BP is at in preparing their revision package, which will be a little delayed. Hopefully within the next two weeks you will be seeing that revision package. Once we do receive it, staff will need to work with the Administrative Law Judge and then with the Council, probably in executive committee, on how to proceed with the adjudicative process.</p> <p><b>CHAIR LUCE:</b> Thank you. That concludes your remarks?</p> <p><b>MS. ELLING:</b> That's it.</p> <p><b>CHAIR LUCE:</b> Brief and to the point. Thank you very much.</p> <p><b>MS. FENTON:</b> I have a question.</p> <p><b>CHAIR LUCE:</b> Ms. Fenton, do you have a question?</p> <p><b>MS. FENTON:</b> Yes. The last couple of meetings before the last Mike Torpey was here, and he indicated that they would be, they being BP, would be submitting some kind of a letter acknowledging the fact that there was going to be an extensive amendment proposal and recognition that the one-year review time period that EFSEC has would be adjusted accordingly, something to that effect, and I still haven't seen the letter, so I was just curious.</p> <p><b>MS. ELLING:</b> We are expecting the letter to be a cover letter to the revision package.</p> <p><b>MS. FENTON:</b> Okay. Thank you.</p> <p><b>CHAIR LUCE:</b> Any other questions?</p>	

#### **ITEM NO. 10: STARBUCK POWER PROJECT**

<b><i>Application Extension Request</i></b>	<b><i>Irina Makarow, EFSEC</i></b>
<p><b>CHAIR LUCE:</b> Moving ahead to the Starbuck Power Project and application extension request, an action item, I would ask Council Member Carelli to handle this. He's been particularly active and involved in this issue.</p> <p><b>MR. CARELLI:</b> You have before you proposed Council Order 774, and I want to only do one thing, and that's draw the Council Members' attention to the last paragraph on Page 1 which indicates that on March 11, '02 the EFSEC Council meeting granted Starbuck Power Company's request to suspend the review of Application 2001-02 for six months. It seems to start the beginning point for suspension of this project from review of the application. I believe it was during the February regular Council meeting we had a Council discussion on this point, and Counsel for the Environment was present talking about possibly not extending the suspension, and at that point I suggested that we grant the company a two-year suspension, two additional years of suspension, and make that a final suspension of the project review. If they are not coming in with a final package within that two-year period, then we should take steps to terminate the application. The conclusion in Order 774 on Page 2 indicates that we would grant</p>	

an additional extension through March 1, 2004. If we're going to be consistent and give the company an additional two years, then that should be 2005, if that is the intent of the Council.

**CHAIR LUCE:** Consistency is a value. Do we have any questions by Council Members? So my understanding is, Mr. Carelli, that 2004 should be changed to 2005 in the resolution.

**MR. CARELLI:** That's correct.

**CHAIR LUCE:** Also, on Item 4 at the end of the resolution, if the Council does not receive a request.

**MR. CARELLI:** That's correct. All right.

**CHAIR LUCE:** Any comments, questions from Council Members?

**MR. IFIE:** Mr. Chair, I'd appreciate it if we will get some response from staff as far as how we responded to the issue that was brought up by the Counsel for the Environment at the last meeting that we had. As I recall they had three points that it brought up for why they felt the extension should not be granted. It would be helpful for me and probably for all of us to see how we addressed those issues.

**MS. MAKAROW:** Maybe I can answer that for you Mr. Ifie, although, you will have to remind me what the three points were. The first one was that the Counsel for the Environment felt we didn't have the legal authority to extend the suspension, and in fact we do, and it is pursuant to RCW 80.50.100(1), which is quoted in the draft order. That section of the RCW states that the Council has to report to the Governor's recommendation as to the approval or rejection of an application for certification within 12 months of receipt by the Council or at such later time as is mutually agreed by the Council and the Applicant. I think the fact that the Applicant is asking us for another extension indicates mutual agreement once the Council approves the order.

Mr. Lavigne also in his second argument felt that this extension shouldn't be granted because it would mean that different projects get different time lines for review, and then he also argued that if an extension was granted, that the burden should be put on the Applicant to when they did come back to restart the review to prove whether the project had changed or not and how those changes could impact mitigation that was being presented in the application, and that burden shouldn't be on the parties to the project to try to discover.

With regards to the different time lines, every project has its own time lines, and in this case the Applicant wants to get the extension. Of course, during the extension nothing is happening, so the day that we pick it up would be the day that the review would start again. In fact, in that case the Applicant might be penalized because it might take longer to actually get back to the point where we were, since we would have to review whatever new materials were submitted.

As for putting the burden on the Applicant of determining whether the project has changed or any environmental conditions or regulatory conditions have changed, that is included in this order. At any point in time when they do come back as of now, they will have to certify to the Council either that nothing has changed or if something has changed, they will in essence have to produce new information that supports how their application is still valid or changes to their application with respect to those modifications.

**CHAIR LUCE:** Thank you. Does Council staff have a recommendation with respect to this order?

**MS. MAKAROW:** Yes, to approve it with the date changes.

**CHAIR LUCE:** As indicated by Council Member Carelli. Other questions?

**MR. IFIE:** I've got a question. Also I recall from the last meeting there was a question that was referred to the Assistant Attorney General. I had forgotten what the question was exactly. There was a legal question. I think that is the same one you stated.

**MS. MAKAROW:** That was the first one that I mentioned.

**MR. IFIE:** Ms. Essko, have you had a chance to look at that question?

**MS. ESSKO:** Yes. I concur with Irina's analysis that the statute expressly allows an extension - or excuse me. It says that within 12 months by the receipt of the Council such an application has to be done or such later time as mutually agreed to by the Council and the Applicant. That clearly gives the Council and the Applicant discretion -- or it gives the Council the discretion at the request of the Applicant to extend the deadline beyond the 12-month period.

**MR. IFIE:** Thank you.

**CHAIR LUCE:** Other questions from Council Members?

**MS. MAKAROW:** Chair Luce, I guess I would just like to invite Mike Elmer one last time in case he has a comment.

**CHAIR LUCE:** I was about to do that. Thank you for reminding me. Comments, questions from the Applicant?

**MR. ELMER:** Good afternoon. Starbuck Power feels that the order you're considering is reasonable, and we would anticipate once you have approved, assuming you will approve, that we would be back before the Council in the near future to initiate completion of the site certification process as per the order.

**CHAIR LUCE:** Thank you. Anything to add beyond that?

**MR. ELMER:** No, unless you have other questions.

**CHAIR LUCE:** No. We have before us Council Order No. 774. The Council has heard testimony from the Applicant and inquired of staff and legal counsel, and there is an amendment as I understand it to the draft to change the date from March 11, 2004 in Paragraph 1 of the conclusions to 2005 and likewise in Paragraph 4 of the conclusions to 2005. With those changes do I have a motion to adopt the Council order as presented?

**MR. IFIE:** I so move.

**MS. FENTON:** Second.

**CHAIR LUCE:** Is there discussion among the Council Members? Hearing no discussion among the Council Members is there a call for the question?

**MS. FENTON:** Question.

**CHAIR LUCE:** The question has been called for. All in favor say Aye.

**COUNCIL MEMBERS:** Aye.

**CHAIR LUCE:** The order is approved as modified. Thank you.

## **ITEM NO. 11: ENERGY NORTHWEST PROJECTS**

### **COLUMBIA GENERATING STATION**

<b>Operations</b>	<b>Mike Mills, EFSEC</b>
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**CHAIR LUCE:** The next item before the Council involves the Energy Northwest Project, the Columbia Generating Station operations. Is John Arbuckle here?

**MR. MILLS:** No, John is not here.

**CHAIR LUCE:** You're John today, Mike?

**MR. MILLS:** Yes.

**CHAIR LUCE:** That's why they clean up the minutes here for things like, "You're John today, Mike."

**MR. MILLS:** All right. They don't strike everything Jim says.



**MS. FENTON:** Pretty close.

**CHAIR LUCE:** Redacted, redacted, redacted. Go ahead.

**MR. MILLS:** In your packets there was a press release that was issued by Energy Northwest dated February 28, 2003 that noted Columbia Generation Station ended in a record run. The plant had been in continuous operation for approximately 370 days. On February 28<sup>th</sup> they shut the plant down due to problems with one of the back-up diesel generators, and I spoke with John this morning, and the plant is still down. They're doing testing on the diesel generator, but they don't have a time line when the plant will go back to on line at full power.

**CHAIR LUCE:** When were they scheduled to begin refueling?

**MR. FIKSDAL:** April I believe.

**CHAIR LUCE:** Is there any chance that they will just accelerate the refueling and keep that plant down to start refueling now?

**MR. MILLS:** That's not been mentioned, but I'm sure that could be a consideration. Whenever they shut down, they have a short list or a long list of things that they try to do maintenance wise.

**CHAIR LUCE:** It just seemed like the dates were fairly close together.

**MR. MILLS:** We've not heard that, but that could be a possibility.

#### **WNP-1/4**

<i>Site Restoration</i>	<i>Jim Luce, EFSEC Chair</i>
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**CHAIR LUCE:** WNP 1 and 4 site restoration. I can report that Bonneville Power Administration, Energy Northwest, and the State of Washington are waiting on the Department of Energy, otherwise known as the department of everlasting. So soon as we hear from the Department of Energy we will go and move ahead. We had this matter set, scheduled for the Governor's signing, and some issues arose with the Department of Energy, and I don't want to get into those unless you really want to know about them. And I think the matter has been referred to the Department of Energy in Richland and maybe elsewhere and all due diligence is being used to encourage them to finalize this. As soon as I know more or Cindy Custer, our representative from Bonneville, knows more, I'm sure that we'll get the word out as soon as possible.

#### **ITEM NO. 12: EFSEC RULES**

<i>Topic Discussion</i>	<i>Jim Luce, EFSEC Chair</i>
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**CHAIR LUCE:** The last item before us we have brought some EFSEC rules together today for laying before the Council. These are rules on which the Council has had substantial opportunity for discussion. I'm not going to offer any comments regarding them; although, I would note they will be posted on the EFSEC website as matters that have arrived at the Council for discussion, certificate expiration, socioeconomic application, guidelines for Fish and Wildlife, water right administration.

**MR. FIKSDAL:** Mr. Chair, if I may interrupt.

**CHAIR LUCE:** Yes.

**MR. FIKSDAL:** There is one administrative rule that you have in your packet, WAC 463-47-060, that our Assistant Attorney General would like to have reserved until she has a chance to look at it before we place it on the website.

**CHAIR LUCE:** I think that's a reasonable request, so we will refrain from putting that on our website until such time as the Assistant Attorney General has had a chance to look at that.

**MS. FENTON:** Can I suggest a tracking report for next meeting?

**CHAIR LUCE:** Absolutely

### **ITEM NO. 13: OTHER**

**CHAIR LUCE:** Is there anything else to come before the Council today?

**MR. FRYHLING:** Mr. Chair, there was a report in here from Sumas Energy 2 that was not on our agenda.

**CHAIR LUCE:** There was indeed, and thank you for bringing that to my attention. Does staff want to address the Sumas Energy 2 report dated February 24<sup>th</sup>?

**MS. MAKAROW:** It was included in your package for your information, and the important thing for you to remember is that the Draft Request for Proposals that Sumas 2 is going to be submitting is coming in by the end of this month. I believe the due date will be on or around the 23<sup>rd</sup> of March.

**CHAIR LUCE:** That's the RFP for the PM10 and NOx?

**MS. MAKAROW:** That's correct.

**CHAIR LUCE:** Very good. Thank you, Council Member Fryhling, for bringing that to my attention. Is there anything else to come before the Council? Yes, sir.

**MR. IFIE:** I want to thank staff for the minutes of last month being presented prior to the beginning of this meeting to have the chance to review what we did last meeting and be able to address any loose ends, so I appreciate it.

**MR. FIKSDAL:** We are trying to get those done earlier and faster even though we are adjusting them slightly for ease of reading.

**CHAIR LUCE:** Thank you for bringing that to our attention and also for reminding me that I think Council Member IFIE is a new and very proud father and pictures are available.

### **ITEM NO. 14: ADJOURN**

**CHAIR LUCE:** With that, we'll be adjourned.

*(Council meeting adjourned at 2:40 p.m.)*